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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,867	02/11/2004	Roger P. Hansen	04946.84020	3899

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WARNER NORCROSS & JUDD LLP
900 FIFTH THIRD CENTER
111 LYON STREET, N.W.
GRAND RAPIDS, MI 49503-2487

EXAMINER

GEHMAN, BRYON P

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/776,867

Applicant(s)

HANSEN, ROGER P.

Examiner

Bryon P. Gehman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2006.
2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-6,8-15,17-22,24 and 26-30 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1,4-6,8-15,17-22,24 and 26-30 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 4-6, 8-15, 17-22, 24 and 26-30 are finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 12, "extending substantially beyond" is indefinite, as "substantially" is commonly used in legal parlance to mean "almost" as well as "by a great amount". Accordingly, the phrase can be taken two ways. See also claim 12, lines 9-10.

In claim 8, the claim depends from canceled claim 7.

In claims 12 and 22, line 1 of each, the phrase "book-like" is indefinite, as it is indefinite in what manner and construction the package is "like" a book. See also claims 14-15, 24 and 26-29, line 1 of each and claim 22, line 3. The indefinite phrase "book-like" should just be deleted.

In claim 22, line 6, "said flexible spine" is inconsistent with line 3. The word "flexible" should be canceled.

In claim 24, it depends from canceled claim 23.

In claim 30, line 4, "said tray not extending completely to said wall" is indefinite, as the tray has the flange, the flange forms a peripheral wall, ergo the tray does extend to the peripheral wall.

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3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1 and 12 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Begim (6,959,809, patent equivalent to patent publication 2004/163990 previously employed). Begim discloses a composite package comprising a transparent polymeric tray (17, 19 and 21; respectively) having a first side and a second side, the first side including a plurality of article holding means (8, 12, 37, 2), the polymeric tray including a first section and a second section joined by a flexible spine (between 43 and 45), the flexible spine including opposing ends and a pair of hinges, the hinges and spine allowing the package to open and close like a book, and a paperboard cover (9) attached to the second side of the polymeric tray so that the cover extends over at least a portion of the flexible spine, at least a portion of the first section and at least a portion of the second section, the cover defining at least one cut-out (5 and 7) exposing a portion of the second side of the tray to expose an article contained in the tray, the

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cover including a peripheral edge extending substantially (almost) beyond the opposing ends of the flexible spine.

5. Claims 12 and 13 are finally rejected under 35 U.S.C. 102(e) as being anticipated by Wetsch (6,715,607). Disclosed is a package comprising a paperboard cover (26) having an interior surface, an exterior surface, and a peripheral edge, a thermoformable polymeric tray (14 and 20 joined by a spine) including a first side, a second side and a flexible spine (between 14 and 20) having opposing ends, the first side including article holding means or recesses (inside 20), the second side attached to the interior surface of the paperboard cover, the spine allowing the paperboard cover and polymeric tray to open and close conjointly like a book, the spine not extending to the peripheral edge of the paperboard cover so that the cover extends substantially beyond the opposing ends of the spine.

As to claim 13, the spine defines notches in the tray.

6. Claims 12 and 30 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Burghschweiger (4,724,957). Burghschweiger discloses a package comprising a paperboard cover (2) having an interior surface, an exterior surface, and a peripheral edge, a thermoformable polymeric tray (10-11) including a first side, a second side and a flexible spine (9) having opposing ends, the first side including article holding means or recesses (14 and inside 10), the second side attached to the interior surface of the paperboard cover, the spine allowing the paperboard cover and polymeric tray to open

and close conjointly like a book, the spine not extending to the peripheral edge of the paperboard cover so that the cover extends substantially beyond the opposing ends of the spine.

As to claim 30, Burghschweiger discloses the cover defining at least one void (between 9 and 3) and a portion of the plastic tray attached to the paperboard cover, the portion not including the spine (see Figures 2 and 9A).

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4 and 8-11 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Begim in view of either one of Wetsch and Kallenbach (4,901,884). Wetsch and Kallenbach each disclose a package constructed to hingeably close like a book including a flexible spine (29 and hinge portion between 14 and 20, see Figure 1; 13) provided with notches (areas of the spine between 14 and 20 that do not extend coextensively with 29; 17) to allow or facilitate the closing of the package. To further modify Begim employing the opposing notch teaching of either one of Wetsch and Kallenbach would have been obvious in order to reduce necessary material or facilitate the closing of the package, as taught by either one of Wetsch and Kallenbach.

As to claim 8, Begim discloses printed graphics in Figures 1 and 5.

As to claim 10, Begim discloses recesses in the first side of the tray.

As to claim 11, Begim discloses a step and recess (at 27 and 33) on opposite sides of the spine.

9. Claims 5-6, 8-11, 22, 24 and 26-29 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Begim in view of Elliott et al. (3,487,919). Begim discloses a package comprising a paperboard cover (9) having a peripheral edge, a polymeric tray (17, 19 and at 21) having a spine (43, 45 and therebetween), a first side of the tray including article holding means (8, 12, 37) and a second side attached to the paperboard cover. Elliott et al. disclose joining a polymeric tray to a paperboard cover by a conventional adhesive (13) not applied to the spine area of the tray between portions of the tray. To modify Begim employing the adhesive teaching of Elliott et al. would have been obvious in order to secure the tray to the cover, yet allowing movement of the spine of the package by not adhesively joining the spine to the cover, as suggested by Elliott et al..

As to claims 8 and 27, Begim discloses printed graphics in Figures 1 and 5.

As to claim 10, Begim discloses recesses in the first side of the tray.

As to claim 11, Begim discloses a step and recess (at 27 and 33) on opposite sides of the spine.

As to claim 24, Begim discloses cutouts (at 5 and 7).

As to claims 26 and 28, the combination of Begim with Elliott et al. renders the cover adhered to the tray by conventional adhesive disposed between the flange and

the peripheral edge of the cover, the choice of adhesive being a matter of choice and degree.

As to claim 29, Begim disclose a recess in the first side of the tray.

10. Claims 13 and 14 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Begim and Burghschweiger in view of Kallenbach (4,901,884). Kallenbach discloses a flexible spine (13) provided with notches (17) to facilitate the closing of the package. To further modify the structure previously employed employing the opposing notch teaching of Kallenbach would have been obvious in order to facilitate the closing of the package, as taught by Kallenbach.

As to claim 14, Begim disclose a cut-out (at 5 or 7) in the cover.

11. Claims 15 and 17-21 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 14 above, and further in view of one of Elliott et al. and Derraugh (5,769,217). Elliott et al. and Derraugh et al. each disclose a package comprising an outer cover and an inner tray with the cover adhered to the tray by conventional adhesive disposed between the flange and the peripheral edge of the cover, the choice of adhesive being a matter of choice and degree.

As to claim 17, Begim and Burghschweiger each disclose a means (at 27 and 33; at 19 and 35) for latching.

As to claim 18, Begim and Burghschweiger each discloses printed graphics (in Figures 1 and 5; column 1, line 59 through column 2, line 4).

As to claims 20 and 21, Begim discloses a recess (37) in the first side of the tray, including a cut-out (41).

12. Applicant's arguments filed February 6, 2006 have been fully considered but they are not persuasive. Applicant's use of the phrase "extending substantially beyond" is indefinite, as the phrase can mean "extending to a large degree beyond" or "extending almost beyond" in legal parlance. In the first interpretation, the secondary teachings of Kallenbach and Wetsch disclose it was known to reduce the spine in relation to the remainder of the package. The fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). In the second interpretation, the claim language fails to distinguish from the prior art to Begim or Burghschweiger.

With respect to Burghschweiger, a consideration of the Figures and the plastic tray extent with respect to the paper cover extent appears to disclose a tray that is spaced from the peripheral edge of the paper cover.

With respect to Begim combined with Elliott et al., the omission of a structure at the bending of the package of Elliott et al. defines a free folding portion free of adhesive, and the flexible spine of Begim will buckle, as disclosed or absent the adhesively joined spine. The combination of Begim with Elliott et al. will also buckle.

In response to applicant's argument that the examiner's conclusion of obviousness employing the teachings of Kallenbach and now Wetsch is based upon

improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Kallenbach and Wetsch each disclose spined packages with reduced spines.

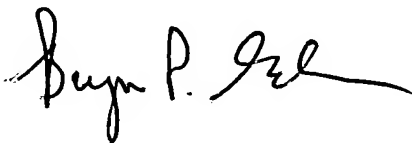
13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bryon P. Gehman
Primary Examiner
Art Unit 3728

BPG